IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CRIMINAL WRIT PETITION NO.313 OF 2005

R. Julian Rayappan Petitioner

Vs.

Supdt. of Yervada Central Prison,
Pune & ors. Respondents

Mr.Thomas Jacob for petitioner.
Mr.D.S.Mhaispurkar, APP for State.

CORAM: S.S.PARKAR & ANOOP V. MOHTA,JJ.
August 25, 2005.

ORAL ORDER:

1. This petition has been filed by the prisoner for his release from custody on the ground that he has undergone life imprisonment which was awarded to him for offence of murder under Section 302 of IPC.

2. On behalf of the Respondent-State affidavits dated 10th June 2005 and 8th July 2005 have been filed by Nana Wankhede, Jailor Group-I attached to Yeravada Central Prison, Pune.

3. As per the respondents the petitioner was convicted for the offence of murder by order dated 23rd February 1979. As per the Guidelines dated 11th May 1992 the petitioner is put in category 3(b) and, therefore, has to undergo sentence of 24 years'

imprisonment for the kind of offence of murder committed by him. According to the respondents as on 30th June 2005 the prisoner had undergone actual imprisonment for a period of 17 years, 7 months and 21 days and he is entitled to the State remission to the extent of 2 years and 9 months. Thus he is said to have undergone a total period of imprisonment, including State remissions, of 20 years, 4 months and 21 days and, therefore, as on 30th June 2005 he had to still undergo imprisonment for a period of 3 years, 7 months and 9 days including State remissions.

4. On behalf of the petitioner reliance is placed on the Guidelines dated 18/12/1978. Those Guidelines are superseded by the Guidelines dated 11th May 1992 according to which he has to undergo a total imprisonment of 24 years. The Guidelines dated 11/5/1992 are applicable for the orders of conviction passed after 18/12/1978 and, therefore, reliance on behalf of the petitioner on the Guidelines dated 18th December 1978 is misplaced.

5. Secondly, on behalf of the petitioner it is stated that the Respondent-State has not properly

applied the Rules about earned remissions and if all the remissions had been given to him, he would have completed 24 years of imprisonment. As regards the same, it is pointed out on behalf of the State that the petitioner, when he was released on furlough on 20th February 1991 for a period of two weeks, he had not surrendered and was absconding for a period of 3753 days i.e. for a period of more than ten years. The petitioner was absconding for such a long period and, therefore, he has been deprived of the remissions, by way of punishment, which were acquired by him. Of course, he is not deprived of the State remissions as stated earlier which is at present to the extent of 2 years and 9 months.

6. On behalf of the petitioner it is argued that the prisoner was wrongly deprived of his remissions. It is argued that the petitioner could not surrender after the expiry of the period of furlough as his mother was unwell and there was no one to take care of her and, therefore, he got married. The petitioner's Advocate is now, for the first time, relying on certain medical documents to show that his mother was not well and according to him the respondents have wrongly stated in the affidavit that

he had gone on furlough leave due to illness of his father. But it is not denied on behalf of the petitioner that petitioner was absconding for a period of ten years and it is expressly admitted across the bar by the learned Advocate for the petitioner that the petitioner was absconding for a period of more than ten years. We cannot find fault with the authorities if the petitioner has been deprived of remissions for absconding or for not surrendering for a period of more than ten years when he had gone on furlough for a period of two weeks.

7. In the circumstances, there is no substance in the petition and, therefore, the same is rejected. If the petitioner wants to make any representation, he can file the same with the concerned authorities.

(S.S.PARKAR,J.)

(ANOOP V.MOHTA,J.)